

**Letter of Findings Number: 04-20140471P  
Tax Administration  
For Tax Years 2011-13**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

The penalties for underpayment of sales tax are not waived. The retail merchant did not properly understand and follow Indiana sales tax procedures.

### ISSUE

#### **I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

### STATEMENT OF FACTS

Taxpayer is an Indiana retail merchant. As the result of a sales tax audit covering the tax years 2011, 2012, and 2013, the Indiana Department of Revenue ("Department") determined that Taxpayer had under-collected sales tax and therefore issued proposed assessments for sales tax, penalty, and interest for those years. Taxpayer disagreed with the penalty assessments. Taxpayer submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Tax Administration–Penalty.**

### DISCUSSION

Taxpayer protests the imposition of negligence penalties for the tax years 2011, 2012, and 2013. Taxpayer asks for an abatement of the penalty assessed against it on the grounds that the retail location's previous owner gave bad advice regarding the collection and remittance of sales tax. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department refers to IC § 6-8.1-10-2.1(d), which states:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.  
(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

Taxpayer protests the Department's assessment of penalties. After review of the documentation and analysis provided in the protest process, the Department may not waive penalty as provided by [45 IAC 15-11-2\(c\)](#). IC § 6-8.1-10-2.1 requires a taxpayer to show that failure to remit taxes in a timely manner is due to reasonable cause. While it may be true that the previous owner gave Taxpayer bad advice, this does not relieve Taxpayer of the burden of knowing and following correct sales tax collection and remittance procedures. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

### FINDING

Taxpayer's protest is denied.

*Posted: 04/29/2015 by Legislative Services Agency*

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